

PART 1956 - DEBT SETTLEMENT

Subpart C - Debt Settlement - Community and Business Programs

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PART 1956 - DEBT SETTLEMENT

Subpart C - Debt Settlement - Community and Business Programs

§ 1956.101 Purpose.

This subpart delegates authority and prescribes policies and procedures for debt settlement of Water and Waste Disposal System loans; Community Facility loans; Association Recreation loans; Watershed loans and advances; Resource, Conservation and Development loans; Rural Renewal loans; direct Business and Industry loans; Irrigation and Drainage loans; Shift-in-land-use loans; and Indian Tribal Land Acquisition loans; and Section 306C WWD loans. Settlement of Economic Opportunity Cooperative loans, Claims Against Third Party Converters, Nonprogram loans, Rural Business Enterprise/Television Demonstration Grants, Rural Development Loan Fund loans, Intermediary Relending Program loans, Nonprofit National Corporations Loans and Grants, and 601 Energy Impact Assistance Grants, is not authorized under independent statutory authority and settlement under these programs is handled pursuant to the Federal Claims Collection Joint Standards, 4 CFR Parts 101-105 as described in §1956.147 of this subpart.

(Revised 06-19-97, SPECIAL PN.)

§ 1956.102 Application of policies. (Revised 09-07-94, PN 232)

(a) General. If a debt is eligible for settlement, the debt settlement authorities of the agency should be explained and the privileges thereof extended to the debtor. All debtors are entitled to impartial treatment and uniform consideration under this subpart. Accordingly, agency personnel charged with any responsibility in connection with debt settlement will adhere strictly to this subpart.

(b) For hospital and health care facilities only. Loan servicing and debt restructuring options according to §1956.143 of this subpart must be exhausted before other settlement authorities of this subpart are applicable.

§§ 1956.103 - 1956.104 [Reserved]

§ 1956.105 Definitions.

(a) Settlement. The compromise, adjustment, cancellation, or chargeoff of a debt owed to the agency. The term "settlement" is used for convenience in referring to compromise, adjustment, cancellation, or chargeoff actions, individually or collectively.

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(b) Compromise. The satisfaction of a debt, including a release of liability, by the acceptance of a lump-sum payment of less than the total amount owed on the debt.

(c) Adjustment. The satisfaction of a debt, including a release of liability, when acceptance is conditioned upon completion of payment of the adjusted amount at a specific future time or times, with or without the payment of any consideration when the adjustment offer is approved. An adjustment is not a final settlement until all payments under the adjustment agreement have been made.

(d) Cancellation. The final discharge of a debt with a release of liability.

(e) Chargeoff. To write off a debt and terminate all servicing activity without a release of liability. This is not a final discharge of the debt, but rather a decision upon the part of the agency to remove the debt from agency receivables.

(f) Debtor. The borrower of loan funds under any of the agency programs specified in §1956.101 of this subpart.

(g) Security. All that serves as collateral for the agency loan(s), including, but not limited to, revenues, tax levies, municipal bonds, and real and chattel property.

(h) Servicing official. The Rural Development official who is primarily responsible for servicing the account.

(i) United States Attorney. An attorney for the United States Department of Justice.

(j) Independent Qualified Fee Appraiser. An individual who is a designated member of the American Institute of Real Estate Appraisers, Society of Real Estate Appraisers, or an equivalent organization, requiring appraisal education, testing, and experience.
(Added 11-15-89, SPECIAL PN.)

(k) Indian Tribal Land Acquisition Loans. Loans which have been made under the Indian Land Acquisition Act to Indian tribes or tribal corporations recognized by the Secretary of the Interior, for the purchase of land within tribal reservations and Alaskan Communities.
(25 U.S.C. 488) (Added 11-15-89, SPECIAL PN.)

§§ 1956.106 - 1956.108 [Reserved]

§ 1956.109 General requirements for debt settlement.

(a) Debt due and payable. The debt or any extension thereof on which settlement is requested must be due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application for settlement, unless the debt is to be cancelled without application under §1956.130 (b) or charged off under §1956.136 of this subpart.

(b) Disposition of security. Ordinarily, all security will be disposed of prior to the date of application for settlement. There are exceptions:

(1) It may be necessary to abandon security through the debt settlement process. For example, a community may be rendered uninhabitable by a toxic or hazardous substance. In such cases, debt settlement may proceed provided the servicing official determines:

(i) That further collection efforts with respect to the security in question would be ineffective or uneconomical.

(ii) That it is in the best interests of the Government to proceed with debt settlement.

(iii) That the proposal otherwise meets the requirements appropriate to the type of settlement under consideration, and

(iv) The approval of the Administrator is obtained.

(2) A servicing action may have been carried but which resulted in a less than complete disposition of security. For example, the Government may have consented to a voluntary sale of a debtor's real and chattel property without reference to other security, which might include, but is not limited to: an additional lien on revenue, a third party pledge of security, or a pledge of personal liability. In such cases, debt settlement may proceed provided the requirements of §1956.109(b)(1) of this subpart are met.

(3) Security can be retained under the compromise and adjustment offers as specified in §1956.124 of this subpart.

(4) Settlement of a claim against an estate will be based on the recovery that may reasonably be expected, taking into consideration such items as the security, costs of administration, allowances of minor children and surviving spouse, allowable funeral expenses, dower and courtesy rights, and specific encumbrances on the property having priority over claims of the Government.

(c) Proceeds from the sale of security. Proceeds from the sale of security must be applied on the debtor's account, taking into consideration the disposition requirements of any grant agreement, prior to the date of application for settlement, except when security is retained as provided for in §1956.109(b) of this subpart. Debtors will not be allowed to sell security and use the proceeds as part or all of the debt settlement offer.

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(d) County Committee review. Proposed settlement actions will be reviewed by the County Committee except for the cancellation of debts discharged in bankruptcy under §1956.130(b)(1) of this subpart or when a claim has been referred to a United States Attorney under §1956.112(d) of this subpart. No settlement shall be approved if it is more favorable to the debtor than recommended by the County Committee.

(e) Assistance from Office of General Counsel (OGC). When necessary, State Directors will obtain advice from OGC in handling proposed debt settlement actions.

(f) Format. Form RD 1956-1, "Application for Settlement of Indebtedness," will be utilized for all settlement actions under this subpart.

§1956.110 Joint debtors.

Settlements may not be approved for one joint debtor unless approved for all debtors. Joint debtors includes all parties, individuals, and organizations, who are legally liable for payment of the debt.

(a) Individual settlement offers from joint debtors can be accepted and processed only as a joint offer. A separate Form RD 1956-1 will be completed by each debtor unless the debtors are members of the same family and all necessary financial information on each debtor can be shown clearly on a single application.

(b) If one of the joint debtors is deceased or has received a discharge of the debt in bankruptcy, or if the whereabouts of one of the debtors is unknown, or it is otherwise impossible or impractical to obtain the signature of the debtor, the application for settlement may be accepted without that debtor's signature if it contains adequate information on each of the debtors to justify settlement of the debt as to each of the debtors. The name of the debtor requesting settlement will be shown at the top of Form RD 1956-1 followed by name and status of the other debtor. For example, "John Doe, joint debtor with Jane Doe, deceased."

(c) Joint debtors must be advised in writing that all debtors will remain liable for the balance of the debt until any payment(s) due under the joint offer have been made.

§1956.111 Debtors in bankruptcy.

FmHA personnel will process reorganization plans of debtors filing under Chapter 9, Chapter 11, or Chapter 13 as follows:

(a) Plans submitted by debtors under Chapters 9, 11, and 13 must be sent by the servicing official to the State Director who will recommend either acceptance or rejection of the plans and refer them to the United States Attorney through OGC. When the plan calls for the adjustment of a debt to FmHA, the State Director will obtain the advice of the Administrator before providing OGC with a recommendation on acceptance or rejection of the plan.

(b) The United States Attorney will advise the State Director, through OGC, as to approval or rejection of the debtor's reorganization plan. The State Director will then notify the Finance Office by memorandum of the terms and conditions of the bankruptcy reorganization plan, including any adjustment of the debt.

§1956.112 Debts ineligible for settlement.

Debts will not be settled:

(a) If referral to the Office of Inspector General (OIG) and/or to the OGC is contemplated or pending because of suspected criminal violation, or

(b) If civil action to protect the interests of the Government is contemplated or pending, or

(c) If an investigation for suspected fiscal irregularity is contemplated or pending, or

(d) When a claim has been referred to or a judgment has been obtained by the United States Attorney and the debtor requests settlement, the servicing official will explain to the debtor that the United States Attorney has exclusive jurisdiction over the claim or judgment, and therefore, FmHA has no authority to agree to a settlement offer. If the debtor wishes to make a settlement offer, it must be submitted with any related payment directly to the United States Attorney for consideration.

§1956.113 - 1956.117 [Reserved]

§1956.118 Approval authority.

District Directors cannot approve debt settlement actions. Therefore, they will make no statements to a debtor concerning the action that may be taken upon a debtor's application. Subject to this subpart, the compromise, adjustment, cancellation, or chargeoff of debts will be approved or rejected:

(a) By the State Director when the outstanding balance of the indebtedness involved in the settlement is less than \$50,000, including principal, interest, and other charges.

(b) By the Administrator or his designee when the outstanding balance of the indebtedness involved in the settlement is \$50,000 or more, including principal, interest, and other charges.

§1956.119 - 1956.123 [Reserved]

§1956.124 Compromise and adjustment.

Nonjudgment debts may be compromised or adjusted upon application of the debtor(s), or if the debtor is an individual and unable to act, upon application of the guardian, executor, or administrator of the debtor's estate.

(a) General provisions. Debts, regardless of the amount, may be compromised or adjusted subject to the following:

(1) The debt or any extension thereof on which compromise or adjustment is requested is due and payable under the terms of the note or other instrument, or because of acceleration by written notice, prior to the date of application for settlement.

(2) The period of time during which payments on adjustment offers are to be made cannot exceed five years without the approval of the Administrator.

(3) Efforts will be made to avoid applications for settlement in which debtors offer a specified amount payable upon notice of approval of the proposed settlement.

(b) Debtor's ability to pay. In evaluating the debtor's settlement application, it is essential that reliable information be obtained in sufficient detail to assure that the offer accurately reflects the debtor's ability to pay. The debtor's income, expenses, and nonsecurity assets are critical factors in determining the type of settlement and the amount which the debtor can reasonably be expected to offer. Critical information should include the following:

- (1) The debtor's total present income from all sources will be determined. In addition, careful consideration will be given to the probable sources, amount, and stability of income to be received over a reasonable period of years. For individuals, public welfare assistance and pensions, including old age pensions and pensions received by veterans for pensionable disabilities will not be considered as sources of funds with which to make compromise and adjustment offers.
 - (2) The debtor's operation and maintenance expenses, and, in the case of individuals, probable living expenses.
 - (3) The priority of payments on debts to third parties.
 - (4) When the debtor is largely dependent on income from an occupation in which manual labor is required, age and health of the individual are vital factors in determining the ability to pay. The number in the debtor's family, their ages and condition of health, will also be weighed in determining the ability to pay. However, when the debtor's income is from investments, business enterprises, or management efforts, age and health of both individual and family are of less importance.
 - (5) The value of the debtor's assets in relation to debts and liens of third parties is important in determining the debtor's ability to pay. It is recognized that debtors must retain a reasonable equity in essential nonsecurity property in order to continue normal operations and, in the case of an individual, to meet family living expenses over a period of years. Under this policy a reasonable equity in a modest nonsecurity homestead occupied by the debtor, whether or not exempt from levy and execution will not be considered as available for offer in settlement. Nonsecurity property which is in excess of minimum business and/or family living needs and which is not exempt from levy and execution should be considered when determining the debtor's ability to pay.
- (c) Debtor unable to pay in full. Debts may be compromised or adjusted and security property retained by the debtor, provided:
- (1) The debtor is unable to pay the indebtedness in full, and
 - (2) The debtor has offered an amount equal to the present fair market value of all security or facility financed, and
 - (3) The debtor has offered any additional amount which the debtor is able to pay, and

(4) The total amount offered represents a reasonable determination of the debtor's ability to pay.

(d) Debtor able to pay in full but refuses to do so. If the debtor has the ability to pay in full but refuses to do so, debts may be compromised or adjusted and security property retained by the debtor under certain conditions:

(1) The OGC advises that the Government is unable to enforce collection in full within a reasonable time by enforced collection proceedings, and the amount offered represents a reasonable settlement considering:

(i) Availability of assets or income which may be realized by enforced collection proceedings, considering the applicable exemptions available to the debtor under State and Federal law, and

(ii) Inheritance prospects within 5 years, and

(iii) Likelihood of debtor obtaining nonexempt property or income within 5 years out of which there could be collected a substantially larger sum than the amount of the present offer, and

(iv) Uncertainty as to the price that the security or other property will bring at forced sale, or

(2) The OGC advises that there is a real doubt concerning the Government's ability to prove its case in court for the full amount of the debt, and the amount offered represents a reasonable settlement considering:

(i) The probability of prevailing on the legal issues involved, and

(ii) The probability of proving facts to establish full or partial recovery, with due regard to the availability of witnesses and other pertinent factors, and

(iii) The probable amount of court costs and attorney's fees which may be assessed against the Government if it is unsuccessful in litigation, or

(3) When the cost of collecting the debt does not justify enforced collection of the full amount. In such cases, the amount accepted in compromise or adjustment may reflect an appropriate discount for administrative and litigious costs of collection. Such discount will not exceed \$600 unless the OGC advises that in the particular case a larger discount is appropriate. The cost of collecting may be a substantial factor in settling small debts but normally will not carry great weight in settling large debts.

§1956.125 - 1956.129 [Reserved]

§1956.130 Cancellation.

Nonjudgment debts, regardless of the amount, may be cancelled with or without application by the debtor.

(a) With application by debtor. Debts may be cancelled upon application of the debtor(s), or if the debtor is an individual and unable to act, upon application of the guardian, executor, or administrator of the debtor's estate. The following conditions apply:

- (1) The servicing official furnishes a favorable recommendation concerning the cancellation, and
- (2) There is no known security for the debt and the debtor has no other assets from which the debt could be collected, and
- (3) The debtor is unable to pay any part of the debt and has no reasonable prospect of being able to do so, and
- (4) The debt or any extension thereof is due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application.

(b) Without application by debtor. Debts may be cancelled upon a favorable recommendation of the servicing official in the following instances:

- (1) Debtors discharged in bankruptcy. If there is no security for the debt, debts discharged in bankruptcy shall be cancelled by the use of Form RD 1956-1 with a copy of the Bankruptcy Court's Discharge Order attached. No attempt will be made to obtain the debtor's signature and County Committee review is unnecessary. If the debtor has executed a new promise to pay prior to discharge and has otherwise accomplished a valid reaffirmation of the debt in accordance with advice from OGC, the debt is not discharged.

(2) Impossible or impractical to obtain debtor's signature. Debts may be cancelled if it is impossible or impractical to obtain a signed application and the requirements of §1956.130(a) (1), (2), and (3) only of this subpart are met. Form RD 1956-1 will document:

(i) The sources of information obtained. (Revised 5-18-88, PN 85)

(ii) That a current effort was made to obtain the debtor's application and the date of such effort. (Revised 5-18-88, PN 85)

(iii) The specific reasons why it was impossible or impracticable to obtain the signature of the debtor and, if the debtor refused to sign, the reason(s) given. (Revised 5-18-88, PN 85)

(3) Deceased debtors (individuals only). The following conditions must exist:

(i) There is no known security,

(ii) An administrator or executor has not been appointed to settle the debtor's estate but the financial condition of the estate has been investigated and it has been established that there is no reasonable prospect of recovery, or

(iii) An administrator or executor has been appointed to settle the estate of the debtor, and

(A) A final settlement has been made and confirmed by the probate court and the Government's claim was recognized properly and the Government has received all funds it was entitled to, or

(B) A final settlement has not been made and confirmed by the probate court, but there are no assets in the estate from which there is any reasonable prospect of recovery, or

(C) Regardless of whether a final settlement has been made, there were assets in the estate from which recovery might have been effected but such assets have been disposed of or lost in a manner which the OGC advises will preclude any reasonable prospect of recovery by the Government.

(4) Disappeared debtor (individuals only). The following conditions must exist:

(i) The debtor has disappeared and cannot be found without undue expense. Reasonable efforts either in person or in writing will be made to locate the debtor. These efforts, including the names and dates of contacts, and the information furnished by each person, will be fully documented on Form RD 1956-1,

(ii) There is no known security for the debt and the debtor has no other assets from which the debt could be collected, and

(iii) The debtor is unable to pay any part of the debt and has no reasonable prospect of being able to do so.

§1956.131 - 1956.135 [Reserved]

§1956.136 Chargeoff.

(a) Judgment debts. Subject to the provisions of §1956.112(d) of this subpart, judgment debts, regardless of the amount, may be charged off without the debtor's signature upon a favorable recommendation of the servicing official provided:

(1) The United States Attorney's file is closed, and

(2) The requirements of §1956.130(b)(1), (2), (3), or (4) of this subpart have been met, as appropriate, or two years have elapsed since any collections were made on the judgment and the debtor(s) has no equity in property on which the judgment is a lien or on which it can presently be made a lien.

(b) Nonjudgment debts. Debts which cannot be settled under other sections of this subpart may be charged off without the debtor's signature upon a favorable recommendation of the servicing official in the following instances:

(1) When the OGC advises in writing that the claim is legally without merit, or that evidence necessary to prove the claim in court cannot be produced.

(2) When there is no known security for the debt, the debtor has no other assets from which the debt could be collected, and the debtor:

(i) Is unable to pay any part of the debt and has no reasonable prospect of being able to do so, or

(ii) Is able to pay part or all of the debt but refuses to do so, and an opinion is received from OGC to the effect that the Government cannot enforce collection of a significant amount from assets or income.

(3) When the debtor is deceased (individuals only), disappeared (individuals only), or when it is impossible or impractical to obtain the debtor's signature, and the conditions of §1956.136(b)(2) of this subpart are met.

§1956.137 Adjustment of Unpaid Principal - Indian Tribal Land Acquisition Loans. (Added 11-15-89, SPECIAL PN)

This section pertains exclusively to the reduction of unpaid principal on Indian Tribal Land Acquisition loans. (Pub. L. 101-82.)

(a) Application by borrower. Upon application by the borrower, the FmHA Administrator may adjust the unpaid principal balance only, on any loan or loans, to the current fair market value of the land purchased with the proceeds of the loans. A separate application will be made for each loan. To be eligible, each application must meet the following conditions:

(1) The current fair market value of the land has declined by at least 25 percent since the land was purchased by the borrower with FmHA loan funds. Current fair market value shall be determined through an appraisal by an independent qualified fee appraiser, as defined in §1956.105(j) of this subpart and selected by mutual agreement between the borrower and FmHA. The borrower will submit its selection of an appraiser, together with the appraiser's qualifications, in writing, to FmHA for acceptance or rejection. The cost of the appraisal shall be paid by the borrower.

(2) The land has been held by the borrower for at least 5 years.

(3) The Secretary of Interior or designee finds, and status in writing to FmHA, that the borrower has insufficient income to both repay the loan or loans and provide normal tribal governmental services.

(b) Review of Application Decision. If an application is rejected, the borrower may request a review of this decision under Subpart B of Part 1900 of this Chapter.

(c) Future applications. A borrower that had a loan adjusted under this section shall not submit an application for another adjustment on the same loan for a period of 5 years from the date the last reduction became effective.

(d) Processing. All requests for principal adjustment will be forwarded to the National Office with the following information:

(1) Form RD 1956-1. Complete only Parts I, II, VI, and VIII. Part VI, Debtors Offer and Certification, will be made in a separate attachment and contain the adjusted unpaid principal amount for which FmHA approval is requested. In Part VI of the form, type "see attached."

(2) Letter from the Secretary of Interior or Designee. Reference to this letter should be made in Part VIII of Form RD 1956-1.

(3) For first time requests, the State Director's determination of the appraised value of the land when the loan (or loans) was made and the current fair market value appraisal as determined by an independent qualified fee appraiser.

(4) For subsequent requests, the current and previous fair market value appraisal as determined by an independent qualified fee appraiser.

(5) Draft of Form RD 1951-33, "Reamortization Request," if applicable. Upon concurrence by the National Office, the adjusted unpaid principal and outstanding accrued interest may be reamortized at the original note rate for the balance of the existing term of the note and in accordance with the other applicable provisions of Subpart E of Part 1951 of this chapter. The approved original of Form RD 1956-1 will be sent to the Finance Office, together with a copy of Form RD 1951-33, signed by the State Director. (Revised 04-21-93, PN 204.)

§1956.138 Processing.

(a) Approval. When a debt settlement application is approved, the State Director will:

(1) Send the original approved Form RD 1956-1 to the Finance Office.

(2) Notify debtors in writing of settlement approval, including the specific amount and terms of the offer that were accepted, for compromise and adjustment offers under §1956.124 and cancellations with application under §1956.130 (a) of this subpart.

(3) Not be required to notify debtors of settlement approval when debts are cancelled without application under §1956.130 (b) or charged off under §1956.136 of this subpart.

(b) Requesting additional information. When rejection appears to be necessary either because of lack of information or because the amount of a compromise or adjustment offer is inadequate, the State Director may request the servicing official to obtain the additional information or make an effort to obtain a more acceptable offer, as the circumstances justify. Notice of rejection of an offer will be withheld in such cases until sufficient time has elapsed to enable the debtor to present further information or a new offer.

(c) Rejection. When a debt settlement application is rejected, the State Director will:

(1) Insert the reasons for rejection on the Form RD 1956-1.

(2) Retain the original Form RD 1956-1 in the State Office and return case files and copies of Form RD 1956-1 to the servicing official.

(3) Request the Finance Office to return any adjustment or compromise payment held by the Finance Office to the borrower, in care of the servicing official.

(4) Return any adjustment or compromise payment held by the State Office to the borrower, in care of the servicing official.

(5) Notify the debtor in writing of the reasons for the rejection for compromise and adjustment offers under §1956.124 and cancellations with application under §1956.130 (a) of this subpart.

(d) Appeal rights. In accordance with Subpart B of Part 1900 of this chapter, the debtor will be given the right to appeal the rejection of any debt settlement offer made by the debtor under this subpart.

§1956.139 Collections.

(a) When the debtor offers a lump-sum payment in compromise or an initial payment on an adjustment offer, that payment will accompany the settlement application at the time the application is filed with the servicing official.

(b) Except as provided in paragraph (c) of this section, debt settlement payments will be deposited and transmitted as required in Subpart B of Part 1951 of this chapter.

(c) Checks or check transmittal letters containing restrictive notations such as "Settlement in full" or "Payment in full," will be forwarded to the State Office where they will be retained until approval or rejection of the offer. The use of restrictive notations will be discouraged to the fullest extent possible.

(d) All payments evidenced by Form RD 451-2, "Schedule of Remittances," bearing the legend "Compromise Offer - FmHA" or "Adjustment Offer - FmHA," will be held in the Deposits Fund Account by the Finance Office until notification is received from the State Office of the approval or rejection of the offer.

(1) Upon receipt of an approved Form RD 1956-1, remittances will be applied in accordance with established policies, beginning with the oldest loan included in the settlement, except that when the request for settlement includes loans made from different revolving funds, the Finance Office will prorate the amount received on the basis of the total principal balance due the respective revolving funds.

(2) Upon notification of a rejection of a debtor's offer and receipt of a request from the State Director for a refund, the Finance Office will refund to the debtor, in care of the servicing official, the amount held in the Deposits Fund Account.

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(e) When a debtor's adjustment offer is approved, the accounts involved will not be adjusted in the records of the Finance Office until all payments have been made. Form RD 1956-1 will be held in a suspense file pending payment of the full amount of the approved offer.

(f) If an approved debt settlement agreement is later voided by the State Director in accordance with §1956.142 (e) of this subpart, any payments which have been received shall be retained as payments on the debt owed at the time the compromise or adjustment offer was approved.

§§1956.140 - 1956.141 [Reserved]

§1956.142 Delinquent adjustment agreements.

(a) The servicing official is responsible for notifying debtors in advance of the due dates of payments on debt settlement agreements and for monitoring compliance with the terms of settlement agreements. If a payment is delinquent, the servicing official should contact the debtor promptly to determine the reason for the delinquency and the debtor's plan for completing the agreement.

(b) Delinquencies of 30 days or more will be reported to the State Director along with other pertinent information and the recommendation of the servicing official regarding further handling of the case.

(c) The State Director may extend, for ninety days, the time for making the payments when the circumstances of the case justify an extension. Extensions for a greater period of time may be made by the State Director upon the recommendation of the County Committee and the servicing official.

(d) When the debtor is financially unable to meet the terms of the debt settlement agreement, the State Director may void the existing agreement and process a new settlement more consistent with the debtor's repayment ability, provided the facts in the case justify such action.

(e) If the State Director determines that the debtor cannot or will not meet the terms of the settlement agreement and if the facts do not justify approval of a new settlement agreement, the State Director will void the existing agreement and direct the servicing official to take other servicing actions appropriate to the circumstances of the case.

(f) When an adjustment agreement is voided, the State Director will notify the debtor giving the reasons in writing, with a copy to the Finance Office and to the servicing official. Upon receipt, the Finance Office will return the original Form RD 1956-1 to the State Office.

§1956.143 Debt restructuring - hospitals and health care facilities. (Added 09-07-94, PN 232.)

This section pertains exclusively to delinquent Community Facility hospital and health care facility loans. Those facilities which are Nonprogram (NP) loans as defined in §1951.203 (f) of Subpart E of Part 1951 of this chapter are excluded. The purpose of debt restructuring is to keep the hospital or health care facility in operation with manageable debt.

(a) Definitions. As used in this section, the following definitions apply:

Consolidation. The combining of two or more debt instruments into one instrument, normally accompanied by reamortization.

Debt writedown. A one-time reduction of the debt owed to FmHA including principal and interest. This reduction will be the minimum amount necessary to meet the level of the facility's ability to service the debt. The writedown will be applied first to interest and then principal.

Delinquency due to circumstances beyond the control of the debtor. Includes situations such as: The debtor has less money than planned due to unexpected and uncontrollable events such as unexpected loss of service area population, unforeseeable costs incurred for compliance with State or Federal regulatory requirements, or the loss of key personnel.

Delinquent debtor. For purposes of this section, delinquency is defined as being 180 days behind schedule on the FmHA payments. That is, one full annual installment, or the equivalent for monthly, quarterly, or semiannual installments.

Eligibility. Applicants must be delinquent due to circumstances beyond their control and have acted in good faith by trying to fulfill the agreements with FmHA in connection with the delinquent loans.

Interest rate reduction. The reduction of interest rate on the restructured loan to as low as the poverty line interest rate in effect on Community and Business Programs loans.

Loan deferral. The temporary delay of principal and interest payments for up to 6 months. The debtor must be able to demonstrate the ability to pay the debt, as restructured, at the end of this delay period.

Net recovery value. A calculation of the net value of the collateral and other assets held by the debtor. This value would be determined by adding the fair market value of FmHA's interest in any real property pledged as collateral for the loan, plus the value of any other assets pledged or otherwise available for the repayment of the debt, minus the anticipated administrative and legal expenses that would be incurred in connection with the liquidation of the loan. This value of the assets should be calculated based upon the facility continuing to operate as a going concern. Therefore, the facility should be valued not merely as an empty building, but as a facility continuing to offer health care services which may, or may not, be similar to that offered by the current operators.

Operations review. A study of management and business operations of the facility by an independent expert. For example, a study of a hospital and nursing home would include such areas as: general and administrative, dietary, housekeeping, laundry, nursing, physical plant, social services, income potential, Federal, State, and insurance payments, and rate analysis. Also, recommendations and conclusions are to be included in the study which would indicate the creditworthiness of the facility and its ability to continue as a going concern. In analyzing a debtor's proposed restructuring plan, FmHA may contract for the completion of an operations review. These reviews will be developed by individuals and entities who have demonstrated an expertise in the analysis of health care facilities from an operational and administrative standpoint. FmHA will consider the following criteria for selection: past experience in health care facility analysis, a familiarity with the problems of rural health care facilities, a knowledge of the particular area currently served by the facility in question, and a willingness to work with both FmHA and the debtor in developing a final plan for restructuring.

Restructured loan. A revision of the debt instruments including any combination of the following: writing down of accumulated interest charges and principal, deferral, consolidation, and adjustment of the interest rates and terms, usually followed by reamortization.

(b) Debtor notification. All servicing actions permitted under Subpart E of Part 1951 of this chapter are to be exhausted prior to consideration for debt restructuring under this section. To this end, the servicing official must ensure that the case file clearly documents that all servicing actions under Subpart E of Part 1951 of this chapter have been exhausted and that the debtor is at least 1 full year's debt service behind schedule for a minimum of 180 days. The debtor then should be informed of the debt restructuring available under this section by using language similar to that provided in Guide 1 of this subpart (available in any FmHA office) as follows:

- (1) An introductory paragraph;
 - (2) A paragraph concerning prior servicing attempts;
 - (3) A discussion of eligibility, as defined in this section, including the provision that the debtor acted in good faith in connection with their FmHA loan and that the delinquency was caused by circumstances beyond their control;
 - (4) Two paragraphs that explain the goal of the debt restructuring program;
 - (5) A paragraph stating that debt restructuring may include a combination of servicing actions listed in paragraph (a) of this section;
 - (6) Information that details what the debtor must do to apply for restructuring. A response must be received within 45 days of receipt of this letter to request consideration for debt restructuring and the request must include projected balance sheets, budgets, and cash-flow statements, which include and clearly identify funding of the FmHA reserve account for the next 3 years;
 - (7) A discussion of FmHA's analysis and calculation process; and
 - (8) A paragraph identifying the FmHA official who may be contacted for assistance.
- (c) State Director's restructuring determination. Upon receipt of the delinquent debtor's request for debt restructuring consideration, the State Director will:
- (1) Within 15 days of receipt of debtor's request, if an operations review is deemed necessary, send a memorandum to the Administrator asking for authority to contract for the review in accordance with Exhibit D of RD Instruction 2024-A (available in any FmHA office). The name of the debtor involved and projected amount of funds anticipated to be spent for the contract should also be provided. It is anticipated that an operations review will be necessary in most cases and that the only exceptions would be for smaller health care facilities or facilities that have developed a proposed plan that is comprehensive and realistic. Upon receipt of the Administrator's program contracting approval authority, a contract is to be awarded to an organization qualified to perform an operations review, as defined in paragraph (a) of this section. The operations review normally will be completed and delivered to FmHA within 60 days of the award date.

(2) Contract for an appraisal to be performed by an independent, qualified fee appraiser. Note: To the extent possible, the appraisal should be scheduled for completion no later than the completion date of the operations review.

(3) Complete an analysis of the operations review, appraisal, and other documented information, and make an eligibility determination.

(i) Eligibility determination. The State Director must conclude that the debtor is eligible for debt restructuring consideration. This conclusion will be clearly documented in the case file, based on a review of the following:

(A) The debtor acted in good faith with regard to the delinquent loan. The case file must reflect the debtor's cooperation in exploring servicing alternatives. The case file should contain no evidence of fraud, waste, or conversion by the debtor, and no evidence that the debtor violated the loan agreement or FmHA regulations.

(B) The delinquency was caused by circumstances beyond the control of the debtor. This determination will be based on the debtor's narrative on this issue, which is a required part of the application for debt restructuring, and a separate review of the debtor's case file and operations.

(C) As part of the application for debt restructuring, the debtor submitted a proposed operating plan that presents feasible alternatives for addressing the delinquency.

(ii) Debtor determined eligible. If the debtor is determined to be eligible for debt restructuring, a determination of a net recovery value and level of debt the facility will support will be made. It is anticipated that meetings with the debtor, the contractor who performed the operations review, and others, as appropriate, could be necessary to develop these values; although it should be emphasized throughout these meetings that any calculations and conclusions reached are preliminary in nature, pending final review by the Administrator. For debt restructuring calculations and computing a feasible cash-flow projection, the following order and combinations of loan servicing actions will be followed:

(A) Loan deferral for up to 6 months.

(B) Interest rate reduction to not less than the poverty line interest rate as determined by RD Instruction 440.1, exhibit B (available in any FmHA Office). Interest rate reduction will be considered only in conjunction with an extension of the term of the loan to the remaining useful life of the facility or 40 years, whichever is less.

(C) Debt writedown. Other creditors of the debtor, representing a substantial portion of the total debt, are expected to participate in the development of a restructuring plan which includes debt writedown. Debt writedown participation by other creditors should be on a pro rata basis with the FmHA writedown. However, failure of these creditors to agree to participate in the plan shall not preclude the use of principal and interest writedown by FmHA if it is determined that this option results in the least cost to the Federal Government.

(iii) Debtor determined ineligible. If the State Director concludes that the debtor is not eligible for debt restructuring consideration for any of the reasons listed in paragraph (c)(3)(i) of this section, then the debtor will be notified by a letter that includes the following information:

(A) The basis for the determination;

(B) The next step in servicing the loan: possible acceleration if the delinquency is not cured; and

(C) The debtor may appeal this determination in accordance with Subpart B of Part 1900 of this chapter.

(iv) State Director's recommendation. Upon completion of the determination of net recovery value and restructured debt in accordance with paragraph (c)(3)(ii) of this section and prior to formal presentation to the borrower, the State Director will forward a recommendation to the National Office with the following documentation:

(A) That all other servicing efforts have been exhausted as required in paragraph (b) of this section.

(B) Financial statements including balance sheets, income and expense, cash-flows for the most recent actual year, and projections for the next 3 years. The amount of FmHA's restructured debt and reserve account requirements are to be clearly indicated on the projected statements. Also, operating statistics, including number of beds, patient days of care, outpatient visits, occupancy percentage, etc., for the same periods of time must be included.

(C) Copies of the operations review, developed for the particular loan, and appraisal.

(D) Calculations of the net recovery value.

(E) Debt restructuring calculations including a listing of the various servicing combinations used in these calculations as contained in paragraph (c)(3)(ii) of this section. For example:

(1) Interest rate reduced from the applicant's current rate on all loans to the poverty line rate as determined by RD Instruction 440.1, exhibit B (available in any FmHA Office) and

(2) Extension of the terms from 25 to 30 years.

(F) Information concerning discussions with the debtor and their agreement or disagreement with the calculations and recommendations.

(G) If debt restructuring is proposed:

(1) A draft of Form RD 1951-33, if applicable, and any other necessary comments or requirements that may be required by OGC and Bond Counsel in §1951.223 (c)(3) and (4) of Subpart E of Part 1951 of this chapter.

(2) A draft of Form RD 1956-1, if applicable. Complete only Parts I, II, VI, and VIII. Part VI, "Debtor's Offer and Certification," will be made in a separate attachment and contain the adjusted unpaid principal amount for which FmHA approval is requested. In Part VI of the form, type "see attached."

(H) If the proposed restructured debt will not cash-flow or is less than the net recovery value, omit the items in paragraph (c)(3)(iv)(G) of this section.

(d) National Office processing of State Director's request.

(1) After reviewing the recommendation to either debt restructure or liquidate for the net recovery value, the Administrator, after concurring, modifying, or not concurring in the recommendation, will return the submission for further processing.

(2) If a debt writedown is used in the restructuring process, the amount will be included in the National Office transmittal memorandum. The draft Form RD 1956-1 will not need to be finalized and returned to the Administrator for signature. The State Director's signature on the final copy will be sufficient. However, a copy of the National Office memorandum is to be attached to the form when completed.

(e) Debtor notification of debt restructuring and net recovery value calculations. The State Director will provide a copy of the basis for the debt restructuring or net recovery determination to the debtor.

(1) If the value of the restructured loan is equal to, or greater than, the recovery value, the debtor will be made an offer to accept the restructured debt by using language similar to that provided in Guide 2 of this subpart (available in any FmHA Office) and including the following paragraphs:

(i) An introductory paragraph indicating that FmHA has concluded its consideration of the debtor's request;

(ii) A paragraph indicating FmHA's approval of the debt restructuring request and that acceptance must be received by FmHA within 45 days from receipt of this letter; and

(iii) That the debtor's acceptance will require the execution of a Shared Appreciation Agreement similar to Guide 4 of this subpart (available in any FmHA office) and possible new debt instruments accompanied by Bond Counsel opinions.

(2) If the debt analysis calculations indicate that a restructured debt would be less than the net recovery value of the security, a letter using language similar to that provided in Guide 3 of this subpart (available in any FmHA Office), will be sent to the debtor that includes the following paragraphs:

(i) An introductory paragraph indicating that FmHA has concluded its consideration of the debtor's request;

(ii) Paragraphs indicating that:

(A) The debtor may pay FmHA the net recovery value of the loan. The debtor will be given 30 days from receipt of this letter to inform RD of its intent, 90 days to finalize the payoff, and will be notified that an election to pay off FmHA would require the execution of a Net Recovery Buy Out Recapture Agreement, similar to that provided in Guide 5 of this subpart (available in any FmHA office) or

(B) If the debt is not paid off at the net recovery value, FmHA will proceed to liquidate the loan.

(f) Debtor responses to debt restructuring and net recovery value calculations. Responses from the debtor will be handled as follows:

(1) Acceptance of FmHA's restructured debt offer. When a debtor accepts the offer for debt restructuring, processing will be in accordance with §1951.223 (c) of Subpart E of Part 1951 of this chapter using the adjusted unpaid principal and outstanding accrued interest at the Administrator's approved interest rate and terms. The debtor will be required to execute a Shared Appreciation Agreement which will provide that, should the debtor sell or transfer title to the facility within the next 10 years, FmHA is entitled to a portion of any gain realized. This agreement will include language similar to that found in Guide 4 of this subpart (available in any FmHA Office). The original of Form RD 1956-1, with appropriate attachments signed by the State Director, and a copy of the Shared Appreciation Agreement will be sent to the Finance Office. Note: All documents pertaining to this transaction will be sent to the Finance Office in one single complete package; and

(2) Acceptance by debtor to pay off loan at the recovery value. Processing of this transaction will be in accordance with §1956.124 of this subpart. However, the account does not need to be accelerated. The debtor will be required to execute a Net Recovery Buy Out Recapture Agreement, similar to that found in Guide 5 of this subpart (available in any FmHA Office). The original of Form RD 1956-1, with appropriate attachments signed by the State Director, and a copy of the recorded Net Recovery Buy Out Recapture Agreement will be sent to the Finance Office. The executed Net Recovery Buy Out Recapture Agreement will be recorded in the county in which the facility is located. The Finance Office will credit the

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accounts of debtors who entered into Net Recovery Buy Out Recapture Agreements with the amount paid by the debtor (net recovery value).
Note: All documents pertaining to this transaction will be sent to the Finance Office in one single complete package.

(g) Collection and processing of recapture.

(1) When the servicing Agency becomes aware of the sale or transfer of title to the facility on which there is an effective Net Recovery Buy Out Recapture Agreement (Guide 5 of this subpart available in any Agency office) or a Shared Appreciation Agreement (Guide 4 of this subpart available in any Agency office) outstanding and a determination is made that a recapture is appropriate, the servicing Agency will notify the debtor of the following:

(i) Date and amount of recapture due, and

(ii) Action to be taken if debtor does not respond within the designated timeframe with the amount of recapture due.

(2) When the recapture is received, the payment will be processed on Form RD 451-2 as a miscellaneous collection in accordance with Subpart B of Part 1951 of this chapter. The Form RD 451-2 along with a copy of the Net Recovery Buy Out Recapture Agreement (Guide 5 of this subpart available in any Agency office) or Shared Appreciation Agreement (Guide 4 of this subpart available in any Agency office), as appropriate, will be forwarded to the Finance Office.

(3) When the amount of the recapture has been paid and credited to the debtor's account, the debtor will be released from liability by using Form RD 1965-8 "Release from Personal Liability," modified as appropriate.

(h) No recapture due. If the servicing Agency determines there is no recapture due, the Net Recovery Buy Out Recapture Agreement (Guide 5 of this subpart available in any Agency office) or Shared Appreciation Agreement (Guide 4 of this subpart available in any Agency office) will be appropriately annotated, the Recapture Agreement released from the record, and the Agreement returned to the debtor.

§1956.144 [Reserved]

§1956.145 Disposition of essential Agency records.

RD Instruction 2033-A (available in any Agency office), identifies an "essential Agency record" as the original of any document or record which provides evidence of indebtedness or obligation to a USDA Agency and includes, but is not limited to: promissory notes, assumption agreements and valuable documents, such as bonds fully registered as to principal and interest.

(a) Essential Agency records evidencing debts settled by compromise, completed adjustment or cancelled with application will be returned to the debtor or to the debtors' legal representative. The appropriate legend, such as "Satisfied by Approved Compromise," and the date of the final action will be stamped or typed on the original document. This same information plus the date the original document is returned to the debtor will be shown on a copy to be placed in the debtor's case folder.

(b) Essential Agency records evidencing debts cancelled without application will be placed in the debtor's case folder and disposed of pursuant to RD Instruction 2033-A (available in any Agency office). However, if the debtor requests the document(s), they may be stamped "Satisfied by Approved Cancellation" and returned.

(c) Essential Agency records evidencing charged off debts will be retained in the servicing office and will not be stamped or returned to the debtor. They will be destroyed six years after chargeoff pursuant to RD Instruction 2033-A (available in any Agency office).

§1956.146 Reporting to the Internal Revenue Service (IRS).
(Revised 05-31-95, PN 246.)

Pursuant to a requirement of the Internal Revenue Service (IRS), RHCD, RBCD, RUS, and CFSA will report to the IRS debts which have been determined to be uncollectible. After reporting the debt to IRS, no further efforts to collect the debt will be made. The Finance Office will report to the IRS on IRS Form 1099-C, "Cancellation of Debt," any debt settled through cancellation, compromise, or adjustment.

§1956.147 Debt settlement under the Federal Claims Collection Act. (Added 7-25-90, PN 140.)

The U.S. Department of Justice (DOJ) and the General Accounting Office are charged with the responsibility for implementing the Federal Claims Collection Act and have promulgated the Federal Claims Collection Act Joint Standards (FCCAJS) (4 CFR Parts 101-105) to inform Government

§1956.147 (Con.)

Agencies on how to settle debts and claims which the Agency does not have independent statutory authority to settle. With the exception of loans and claims with outstanding balances of \$20,000 or less, exclusive of interest, penalties, and administrative costs, settlements must be submitted to and approved by the United States Attorney or the DOJ. Debt settlement of Economic Opportunity Cooperative loans, Claims Against Third Party Converters, Nonprogram loans, Industrial Development Grants, Rural Development Loan Fund loans, Intermediary Relending Program loans, Nonprofit National Corporation Loans and Grants, and 601 Energy Impact Assistance Grants are programs that must be settled under the FCCAJS.

(a) Debt settlement of the subject loans and claims falls in the following categories:

(1) Settlement of loans and claims may be approved by the Administrator when the outstanding balance of the indebtedness involved in the settlement is \$20,000 or less, exclusive of interest, penalties, and administrative costs. These loans and claims will be submitted to the National Office on Form FmHA 1956-1, "Application for Settlement of Indebtedness," for debt settlement. Subsequent to approval, Form RD 1956-1 will be distributed in accordance with the Forms Manual Insert (FMI).

(2) Loans and claims with an outstanding balance of \$200,000 or less, inclusive of interest, penalties, and administrative costs, but with an outstanding balance greater than \$20,000, exclusive of interest, penalties, and administrative costs, after approval by the State Director will be referred to your Regional Office of the General Counsel (OGC) for referral to the United States Attorney in whose judicial district the debtor can be found. The form to be used is the Claims Collection Litigation Report (CCLR). This form should be available through the U.S. Attorney. A memorandum from the State Director should be attached to the CCLR recommending acceptance of the debt settlement. If the State Director after reviewing the CCLR does not recommend acceptance, the State Director has the authority to reject the debt settlement.

(3) Loans and claims with an outstanding balance over \$200,000, inclusive of interest, penalties, and administrative costs, will be referred to the Administrator and will include the following:

- (i) The case file(s).
- (ii) A completed CCLR.
- (iii) Copies of the notes, security agreements, and mortgages.

(iv) A current appraisal of any security owned by the debtor.

(v) A narrative which will include:

(A) Recommendation for the acceptance of the debt settlement.

(B) Why the debtor failed.

(C) Steps taken to collect the loan(s).

(D) An analysis of the debtor's future repayment ability.

(E) Why acceptance of the debt settlement offer is in the best interest of the Government.

(4) If the administrator concurs with the recommendation for the debt settlement, it will be referred to the FmHA National Office OGC for referral to the Commercial Litigation Branch, Civil Division, U.S. Department of Justice, Washington, D.C. 20530.

(b) When a debtor has a Community Programs or Business and Industry loan(s) as defined in this subpart, these loan(s) will be debt settled under the authority of the Consolidated Farm and Rural Development Act. In such cases, the subject loans and claims should be listed under Part II(B) on Form RD 1956-1 as other debts owed FmHA. Normally, all the security for the subject loans and claims should be disposed of prior to the submission for debt settlement.

(c) It is not necessary to obtain approval of the United States Attorney or the DOJ (as the case may be) in cases where FmHA decides not to settle a loan or claim.

§1956.148 Exception authority.

The Administrator may make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse affect will be eliminated or minimized if the exception is granted. Any settlement actions approved by the Administrator under this section will be documented on Form RD 1956-1 and returned to the State Office for submission to the Finance Office.

§1956.149 [Reserved]

§1956.150 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575-0124. Public reporting burden for this collection of information is estimated to be 1/2 hour to 30 hours with an average of 8.14 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Ag Box 7630, Washington, D.C. 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. (Revised 09-07-94, PN 232.)

Attachments: Guides 1, 2, 3, 4, and 5.

Notice of Availability of Debt Restructuring
For Delinquent Hospital or Health
Care Facility Debtors

Dear (Debtor Name):

(1) An introductory paragraph, as follows:

"This notice is to inform you that (name of debtor) is seriously behind with its loan payments and to inform you of your options. Please consider these options carefully. If you wish to be considered for these options, you must develop and submit to the Farmers Home Administration (FmHA) the required documentation within 45 days of receiving this notice."

(2) A paragraph that outlines prior attempts to service the loan, as follows:

"Before (name of debtor) can be considered for debt restructuring, you must already have been unsuccessful at alleviating the delinquency through a variety of servicing alternatives, including reamortization, third-party agreements, and transfer and assumptions. In providing information to establish that (name of debtor) has acted in good faith with regard to FmHA loans, you must include the following statement in your request for consideration for loan servicing:

'On behalf of (name of debtor), I certify that a good faith effort was made to cure the FmHA loan delinquency through reamortization, third party agreements, and transfer and assumptions, but that these efforts to cure the delinquency were unsuccessful.'

If you are unaware of these efforts to cure the delinquency, please contact your FmHA servicing official listed below, because debt restructuring cannot be considered until these options are first eliminated."

(3) In discussing eligibility, the following should be inserted in the notice:

"Before FmHA can consider your request for debt restructuring, it must first be established that (name of debtor) has acted in good faith with respect to the delinquent FmHA loan. FmHA will make this determination by analyzing the case file for evidence of fraud, waste, or conversion, and for evidence that all loan agreements and regulations were complied with. It must also be established that the delinquency was caused by circumstances beyond your control. In order to aid in this determination, please include in your request for debt restructuring a narrative on the following:

'The FmHA loan became delinquent due to the following circumstances, which were beyond our control: _____.'

(4) Two paragraphs that explain the goal of the debt restructuring program, as follows:

"If your project is determined eligible for restructuring, a detailed financial and operational analysis will be required. This analysis will focus on two value determinations, which will dictate which servicing options are available. First, an analysis of the facility will be conducted in order to determine, after FmHA loan restructuring, if the facility can operate in an economically viable manner. Second, the net recovery value of the delinquent loan will be calculated, based upon the fair market value of the property pledged as collateral, and any other assets pledged by (name of debtor) in consideration for receiving the loan, less the administrative costs that would be incurred if the loan was liquidated. This value will be determined, in part, based on an appraisal performed by an independent qualified fee appraiser as defined in §1956.105 (j) of this instruction, and paid for by FmHA."

"Once the analysis is completed, the two values will be compared. If the restructured debt provides sufficient cash-flow to continue operations, make the adjusted debt service payments, and fund the FmHA reserve account, and the value of the debt is greater than the net recovery value of the restructured debt, you will be given the opportunity to pay off the delinquent loan at the net recovery value. If you do not pay off at this value, then your account may be accelerated."

(5) A paragraph which emphasizes that restructuring options will be considered according to the following priorities: (1) loan deferral; (2) interest rate reduction and extension of the term of the loan; and (3) debt writedown. Each of these options will be considered with the goal of developing a feasible operating plan for the facility.

(6) In addition to the statement regarding prior servicing options as required in paragraph (2) of this guide and the narrative with respect to the circumstances causing the delinquency, the debtor must also submit the following:

} Balance sheets, budgets, and cash-flow statements for the next 3 years which clearly indicate the amount of cash available to cover some restructured amount of FmHA debt, plus an amount to sufficiently fund the FmHA reserve account.

} A proposed operating plan that projects cash-flow sufficient to support the facility in an economically viable manner.

This proposal should be based on realistic projections and assumptions and should provide methods for alleviating the circumstances that initially caused the delinquency. In order to develop a feasible proposal, significant changes in the current operation may be necessary. Nevertheless, the proposal should be in sufficient detail so that both large and small changes are reflected.

(7) A paragraph that discusses FmHA's analysis and calculation process, as follows:

"Once you have submitted all the information requested in this notice, FmHA can begin processing your request. This processing will involve several steps, including the calculation of your debt's net recovery value and a thorough analysis of your facility's operations. FmHA will start this analysis by reviewing the proposed operating plan that you submit with your request. In addition to this, FmHA may contract for the completion of an 'operations review.' This review, as completed by an independent expert in the operation of health care facilities, could enhance, supplement, or extend your proposal. Based upon your proposal, the analysis developed in the operations review and all other relevant information, including additional consultations with you, FmHA will complete the debt restructuring and net recovery value calculations. You will be notified of the results of these calculations as soon as they are finalized."

(8) A paragraph that provides the name and phone number of the FmHA official available to answer questions or assist the debtor as they develop the information needed to request debt restructuring, and a statement that all of the above information must be submitted within 45 days of receipt of this letter.

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Notice of Debt Restructuring and
Net Recovery Value Calculations
(Approval of Debt Restructuring)

Dear (Debtor Name):

(1) An introductory paragraph, as follows:

"The Farmers Home Administration (FmHA) has concluded its consideration of (name of debtor) request for debt restructuring. Attached, you will find a detailed analysis of our calculations, including our determination of the loan's restructured value and the net recovery value."

(2) A paragraph outlining the results of FmHA's calculations, and what the debtor must do to accept, as follows:

"To summarize, we have concluded that FmHA can approve your request for debt restructuring. Our calculations indicate that (name of debtor) will be able to make necessary payments on the FmHA loan and fund the FmHA reserve account if the delinquent loan is restructured. Therefore, we are offering to restructure your FmHA debt in the following fashion: _____. If you want FmHA to restructure (name of debtor) debt as identified, you must accept this offer in writing. Your acceptance must be received by FmHA not later than 45 days from your receipt of this letter. If you do not accept this offer, FmHA will proceed to liquidate the account."

(3) A paragraph explaining the procedures, once the debtor accepts, as follows:

"Upon receiving your acceptance of the offer to restructure the delinquent loan, FmHA will contact you with regard to formally processing the restructured loan. This may require the execution of new debt instruments. If the loan to be restructured was initially accompanied by Bond Counsel opinion, it will be necessary for you to obtain a new Bond Counsel opinion pertaining to the restructured loan. In addition to the execution of any necessary revised debt instruments, you will also be required to execute a Shared Appreciation Agreement (Guide 4 of this Instruction, available in any FmHA Office). This document will specify that, in consideration of FmHA writing down your debt, you agree to repay to FmHA a portion of any appreciation in the value of the collateral securing the debt remaining after the writedown if you convey the collateral in the next 10 years."

oOo

Notice of Debt Restructuring and
Net Recovery Value Calculations
(Debt Restructuring Not Approved)

Dear (Name of Debtor):

(1) An introductory paragraph as follows:

"The Farmers Home Administration (FmHA) has concluded its consideration of (name of debtor) request for debt restructuring. Attached, you will find a detailed analysis of our calculations, including our determination of the loan's restructured value and the net recovery value."

(2) Paragraphs explaining the options available to the debtor, as follows:

"To summarize, we have concluded that FmHA cannot approve your request for debt restructuring, because our calculations indicate that (name of debtor) would not be able to make necessary payments on the FmHA loan and fund the FmHA reserve account, even if the delinquent loan was restructured. Since we cannot approve your request, you may satisfy the loan by paying to FmHA the net recovery value of the loan which is \$_____. You have 30 days from the receipt of this letter to inform RD of your intent to pay off at the net recovery value, and you have 90 days to finalize this payoff. If you elect to pay off FmHA at the net recovery value, you will be required to execute a Net Recovery Buy Out Recapture Agreement (Guide 5 of this Instruction, available in any FmHA Office). This document will specify that, in consideration of FmHA allowing you to pay off the debt at the reduced amount, you agree to repay to FmHA a part or all of the difference between the net recovery value and the fair market value of the collateral securing the loan at the time the Agreement is executed, if, within 10 years, you convey the collateral property and realize a gain on such sale."

"If you do not pay off the debt at the net recovery value, FmHA will proceed to liquidate the account."

oOo

SHARED APPRECIATION AGREEMENT

This Agreement is entered into between _____ the Farmers Home Administration (FmHA) and (debtor's name) (called "debtor") on ____(Date)____ and expires on ____ (Date)____ (maximum term of 10 years).

Debtor is indebted to FmHA for loan(s) as evidenced by the debt instruments described below:

<u>Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Due Date</u>
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This Agreement is attached to the debt instruments described above. As of the date of this Agreement before writedown, the unpaid principal balance on these debt instruments was \$_____ and the unpaid interest balance was \$_____. These debt instruments were modified by the following debt instruments which are attached to the debt instruments described above.

<u>Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Due Date</u>
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The debt instruments described above are secured by the following real estate security instruments:

<u>Grantor</u>	<u>Date of Security Instrument</u>	<u>Records of County State</u>	<u>Book or Reel</u>	<u>Page</u>
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As a condition to, and in consideration of, FmHA writing down the above amounts and restructuring the loan, debtor agrees to pay FmHA an amount according to the following:

Seventy-five (75) percent of any appreciation in the market value of the property securing the loan as described in the above security instrument(s) not to exceed the sum of the unpaid principal and interest balance as of the date of this Agreement and either the expiration date of this Agreement or the date the debtor pays the loan in full, or transfers title of the security if such event occurs 10 years or less from the date of this Agreement.

The amount of recapture by FmHA will be based on the difference between the value of the security at the time of disposal by debtor and the value of the security at the time this Agreement is entered into. If the debtor violates the term of this Agreement, FmHA will liquidate after the debtor has been notified of the right to appeal.

Market value of the property securing loan(s) \$_____.

Borrower's signature

Farmers Home Administration

oOo

Net Recovery Buy Out
Recapture Agreement

This Agreement is entered into between the Farmers Home Administration (FmHA) and (debtor's name) (called "debtor") on (date) and expires 10 years from the aforesaid date.

In consideration of FmHA allowing the purchase of real estate and/or chattel property financed by an FmHA loan obligation at the net recovery value of \$_____ in accordance with RD Instruction 1956-C, the undersigned agrees to pay 75 percent of the difference between the net recovery value of the real and/or chattel property at the time of execution of this document as stated above and the fair market value of the real and/or chattel property of \$_____ as of the date the property is sold or title transferred for a period of 10 years from the date of this Agreement. The unpaid loan balance is \$_____.

The undersigned understands that the amount calculated above will be due and payable on the day of sale or conveyance if the real and/or chattel property is conveyed within 10 years from the date of this Agreement.

Debtor's signature

Farmers Home Administration

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